



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Polar Power, Inc.

File: B-270242

Date: January 5, 1996

DECISION

Polar Power, Inc. protests the Department of the Air Force's determination to issue a sole source solicitation, No. F19628-95-R-0042, to Mechron Energy, Ltd. for 2kw generators.

We dismiss the protest as untimely.

A Commerce Business Daily announcement was published on July 13, 1995, stating the agency's intention to issue a sole-source solicitation to Mechron on or about October 20. In a letter to the agency dated August 9, Polar Power objected to the sole-source procurement and argued that its generators were better than Mechron's. The Air Force responded by letter dated August 23, received by Polar Power no later than September 5, in which the agency reviewed the history of the sole source requirement, indicated why it could not presently accept Polar Power's generators and reiterated the agency's "decision to use Mechron." The letter further stated that "[a]ll the facts lead us to a Mechron solution" and concluded with "we look forward to working with you on any follow-on competitive buy. . . ."

Polar Power objected to this response in a letter to the agency dated September 5, which it characterizes as an effort to continue its "dispute" with the Air Force. Thereafter, Polar Power's representatives met with and corresponded with the agency for several weeks. On October 11, the Air Force again wrote Polar Power referencing the follow-on discussions and correspondence and stating that none of these efforts had "changed our conclusion that [the firm] does not have a commercially available 2kw unit that will meet our existing military requirement."

Polar Power filed this protest with our Office on October 18 objecting to the agency's intention to continue the sole source procurement to Mechron. The agency argues that Polar Power's protest here is untimely because it was not filed within 10 working days of the firm's receipt of the August 23 letter which clearly stated the Air Force's intention to proceed with the sole source procurement. Polar Power takes the position that, because of the subsequent discussions with the Air Force, the timeliness of its protest to our Office should be measured from its receipt of the October 11 letter of the Air Force.

Polar Power's letter to the Air Force dated August 9 was an agency level protest. Where a protest is initially filed with a contracting agency, any subsequent protest to this Office must be filed within 10 working days of actual or constructive notice of initial adverse agency action on the protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1995). Notwithstanding Polar Power's contrary view, the Air Force's August 23 letter to the firm clearly communicated the agency's intention to proceed with the sole-source procurement in a manner adverse to the protester's position as expressed in its protest. The record clearly establishes that Polar Power received the August 23 letter no later than September 5 and, thus, the firm was required to protest to this Office no later than September 19. Since Polar Power did not file this protest until October 18, the protest is untimely, even though it was filed prior to the date set forth in the CBD announcement for issuing a sole source solicitation to Mechron. See Hadson Defense Sys., Inc.; Research Dev. Labs., B-244522; B-244522.2, Oct. 24, 1991, 91-2 CPD ¶ 368. The fact that a protester continues to pursue its complaint with the contracting agency does not toll the period for filing its protest with our Office. A.B. Dick Co., B-228242.2, Oct. 30, 1987, 87-2 CPD ¶ 420.

The protest is dismissed.

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